

MINUTES OF THE MEETING OF THE BAR - BENCH - MEDIA CONFERENCE

A meeting of the Bar-Bench-Media Conference was held on Wednesday, September 14, 1994 at 1:00 p.m. in the Supreme Court Conference Room in the Carvel State Office Building in Wilmington. The meeting was open to the public. Notice of the meeting had been posted. The members of the Conference in attendance were:

Members from the Print News Media

Ms. Rita Farrell
Mr. James Flood
Mr. John Sweeney

Members from the Electronic News Media

Mr. Alan Loudell
Mr. William D. Osborne
Mr. Michael Sigman

Members from the Bench

Chief Magistrate Patricia Griffin
Justice Randy J. Holland
Judge Jay Paul James
Judge Roderick R. McKelvie

Members from the Bar

Howard M. Handelman, Esquire
Rosemary K. Killian, Esquire
Harvey B. Rubenstein, Esquire

Harvey Rubenstein called the meeting to order. The minutes of the previous meeting were read and approved with corrections to show Judge McKelvie's attendance at the meeting, and to clarify on page 2 that the Conference discussed proposed subject areas for the Conference's agenda in the next year; however, the Conference did not make any final decisions on subject areas.

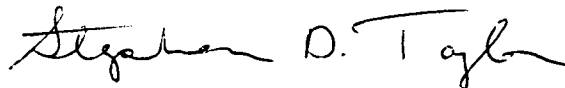
The major topic of the meeting was a discussion of proposed subjects for Conference's agenda during the next year. Two topics proposed by Harvey were accurate and balanced reporting of legal matters by the media and Bar Association responses to judicial or lawyer criticism. Various Conference members spoke of the need for the Bar and Bench to understand the media decision making process as to what gets reported, deadline constraints, space constraints, and the media's need to get timely and understandable responses to their inquiries from the Bar and Bench as well as to have access to trial exhibits and computer docket data. Other Conference members spoke of the need for the media to understand that judges are prohibited from commenting on cases by the Code of Judicial Conduct and lawyers are reluctant to comment to the media when they feel that their remarks and resulting stories will not be accurately or completely reported because of media time and space constraints. The Conference decided that short educational programs for the Bar, Bench, and media to discuss these areas would be beneficial

and would help everyone better understand how the various entities function. An Education Committee was appointed by Harvey to make proposals to the Conference for educational programs and formats. The Committee will be chaired by Tammy Brittingham and consist of Judge McKelvie, Alan Loudell, John Sweeney and Rose Killian.

A brief discussion of the status of the proposed expansion of media access to trial court proceedings took place. Justice Holland told the Committee that the Supreme Court would be discussing the Conference's proposal at the Court's administration meeting in September. The Court was delayed in considering the matter sooner because of recent changes in the Court's composition. Bill Osborne noted that the electronic media needed to come up with pool coverage guideline and to make a dry run to show the courts how the electronic media propose to cover courtroom proceedings.

The next meeting of the Conference was scheduled for November 17, 1994 at 1:00 p.m. in the Supreme Court Conference Room.

Respectfully Submitted,

A handwritten signature in cursive script, reading "Stephen D. Taylor".

Date: November 2, 1994

No More Cameras in Federal Courts

Judicial Conference ends experiment despite few complaints from judges

Showing that it is indeed possible to put the genie back in the bottle, the federal judiciary has decided to reinstitute its ban on cameras in the courtroom.

Effective Dec. 31, the three-year program that allowed broadcasting of civil proceedings in a handful of courts will end. The vote to discontinue it came at the September meeting of the U.S. Judicial Conference, the policy-making body of the federal judiciary headed by Chief Justice William Rehnquist and made up of 26 appellate and district judges.

The conference also refused to approve an amendment to Rule 53 of the Federal Rules of Criminal Procedure that would have removed the absolute ban against broadcasting federal criminal cases.

Fair Trial Concerns

David Sellers, a spokesman for the Administrative Office of the U.S. Courts, said voice votes were about 2-1 against the civil proposal and unanimous against the criminal one. He said that the judges were concerned about the potential impact of cameras on witnesses and jurors. The view was that even if a few participants were affected by broadcast proceedings, a fair trial could be threatened, he said.

Sellers said debate on the issue lasted about 20 minutes and Rehnquist did not participate or vote.

The conference's actions go against the recommendations of both the conference's Committee on Court Administration and Case Management and the Federal Judicial Center, which is the research arm of the judiciary. They had recommended expansion of camera access to civil proceedings.

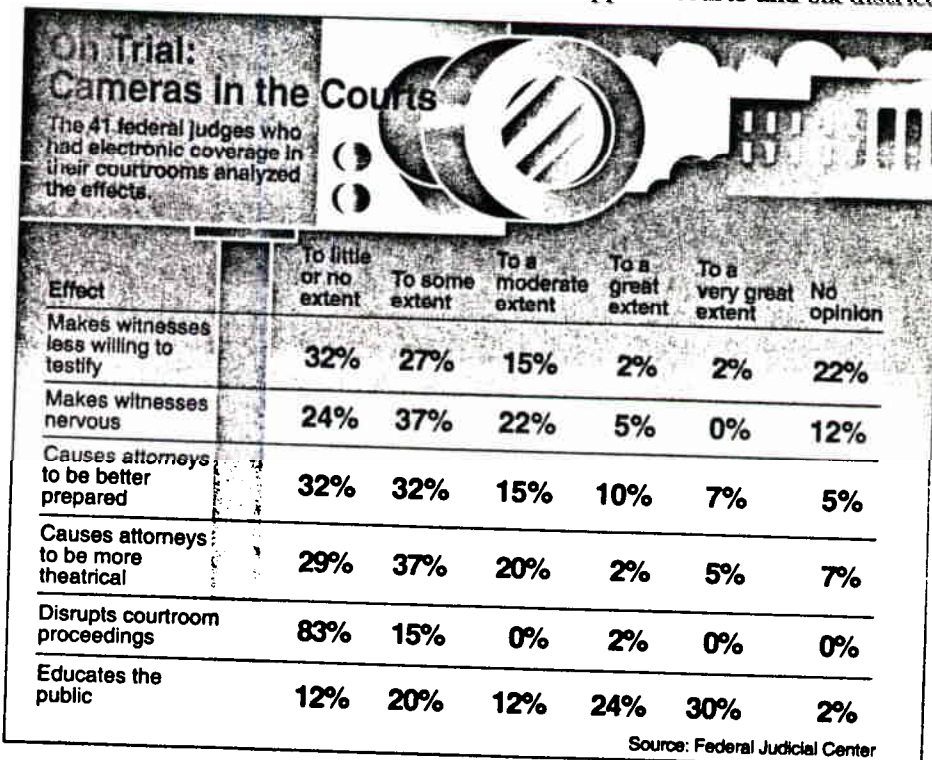
A November 1993 report by the center found judges and attorneys "generally reported observing little or no effect of camera presence on participants in the proceedings, courtroom decorum, or the administration of justice."

Media lawyer Timothy B. Dyk, a partner at Jones, Day, Reavis &

Pogue's Washington, D.C., office, said he was surprised and "very disappointed" by the decision. Dyk has represented various broadcasters in an effort to open the federal courts to cameras, including ABC, CBS, NBC, the Radio-Television

lic appetite for legal drama, broadcasting high-profile criminal proceedings against the Menendez brothers and O.J. Simpson.

The federal project began July 1, 1991, at the urging of Congress. Two appeals courts and six district



News Directors Association, and the National Association of Broadcasters.

He said most judges in the Judicial Conference have no experience with cameras in the courtroom, which could make them less amenable to broadcast coverage. "As an abstract idea it's more threatening than in reality," he said.

Dyk had no predictions for the future, but said it did not appear the Judicial Conference had left the door open for further action. While Congress has the power to drop the prohibition on cameras in federal courts, it is unknown whether that will ever happen, Dyk said.

The Judicial Conference's decision clearly swims against the tide. Some 47 state court systems allow selective broadcasting of courtroom proceedings. A cable network, Court TV, has sprung up to feed the pub-

cours participated. (See "Cameras Experiment One Year Old," July 1992 ABA Journal, page 28.)

More Judgeships Sought

In other action, the conference:

- Agreed to ask Congress for additional temporary judgeships for one appellate and five district courts, and additional permanent judgeships for 21 district courts.

- Moved to make federal courthouses more accessible to the handicapped. One provision approved is designed to increase the availability of funds to pay sign language interpreters. Another is aimed at making witness and jury boxes and other areas in new courthouses wheelchair accessible. While the Americans with Disabilities Act does not apply to the federal judiciary, it has implemented many of its provisions. —Henry J. Reske

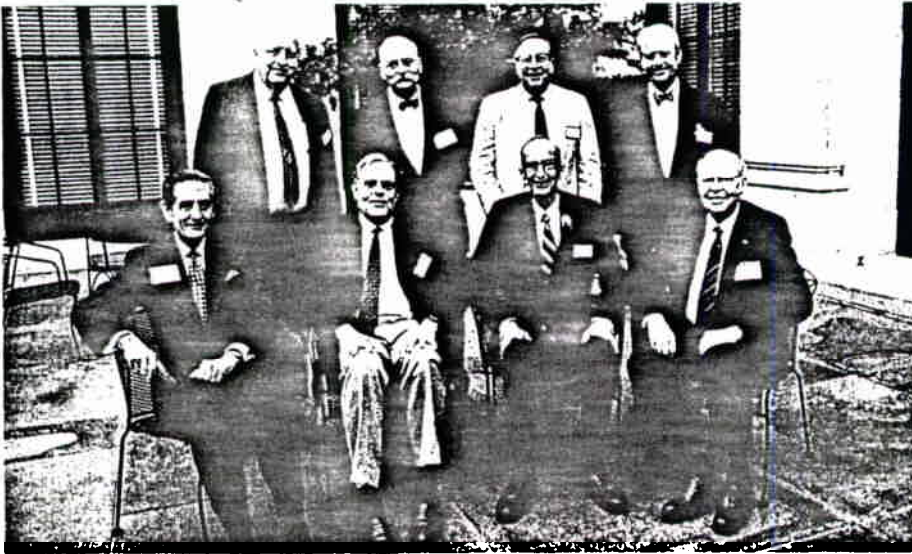
THE THIRD BRANCH

Newsletter
of the
Federal
Courts



Vol. 26
Number 10
October 1994

Conference Acts on Courtroom Cameras



The Executive Committee of the Judicial Conference posed for a photo at a reception held at the Supreme Court last month. (L to R) They are (front row) Chief Judge J. Clifford Wallace (9th Cir.), Chief Judge Gilbert S. Merritt (6th Cir.), Chief Judge John F. Gerry (D. N.J.), Chief Judge Morey L. Sear (E.D. La.), (back row) AO Director L. Ralph Mecham, Judge Charles L. Brieant (S.D. N.Y.), Chief Judge Sam J. Ervin III (4th Cir.), and Chief Judge Richard S. Arnold (8th Cir.).

At its September 20, 1994, meeting, the Judicial Conference was asked to permit photographing, recording, and broadcasting of civil proceedings in federal trial courts and courts of appeals at the discretion of the presiding judge. By roughly a 2-to-1 margin, the Conference disapproved the request. The Judicial Conference also did not ap-

prove an amendment to Criminal Rule 53, which would have allowed cameras in criminal proceedings if authorized under guidelines subsequently promulgated by the Conference.

In considering the recommendation to expand camera coverage in civil proceedings, the Conference

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Attorney General Looks at Justice

Janet Reno was sworn in as Attorney General of the United States on March 12, 1993. She previously served as the state attorney in Dade County Florida.

Q: On a scale of one to ten, with ten being the best, how would you rate the level of communication between the Department of Justice and the Judiciary?

A: I don't have a historical basis from which to frame a view, so I have to defer to the judges who have previous experience and know what the optimum situation is. I do know that I have tried to make sure that there is the best possible communication between the Department of Justice and the Judiciary, starting with the quarterly meetings I have with the Judicial Conference Executive Committee. The various working groups created as a result of these meetings help make certain that we follow through in every way we can. I have tried to work with Mr. Mecham to make sure that loose ends are called to my attention immediately. I also believe that I have

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had before it the report and recommendations of its Committee on Court Administration and Case Management. The committee's report included an evaluation conducted by the Federal Judicial Center of a three-year pilot project in six district and two appellate courts as well as an analysis of studies conducted in state courts. Based upon the data presented, the majority of the Conference concluded that the intimidating effect of cameras on some witnesses and jurors was cause for serious concern. Indeed, some members believed that any negative impact on witnesses or jurors could be a threat to the fair administration of justice. Also taken into account was the FJC report's conclusion that most broadcast coverage was not gavel-to-gavel and "conveyed little verbal information to viewers about the legal process."

The current pilot program permitting cameras in the courtroom in civil proceedings in eight federal courts is scheduled to sunset on December 31, 1994.

In other action, the Judicial Conference did the following:

- Approved for transmittal to Congress a request for the creation of one temporary court of appeals judgeship for the U.S. Court of Appeals for the Second Circuit. This will be added to the 19 temporary court of appeals judgeships already approved by the Conference in September 1992 and modified in September 1993. The Conference also approved for transmittal to Congress a request for the creation of 18 permanent district court judgeships, 5 temporary district court judgeships, and the conversion of 3 existing temporary district court judgeships to permanent. Congress last created new judgeships in December 1990, when it established 11 court of appeals judgeships and 74 district court judgeships. There currently are 179

Judicial Conference Action September 1994

Court	Authorized Judgeships	Requested Judgeships
Court of Appeals for the Second Circuit*	13	1 T
Northern District of Texas	12	1
Southern District of Texas	18	1
Eastern District of Tennessee	5	1
District of Colorado	7	1
District of New Mexico	5	1
District of Arizona	8	2
Southern District of California	8	2
District of Nevada	4	2
Eastern District of New York	15	3
Middle District of Florida	11	4
Western District of New York	4	1 T
Western District of North Carolina	3	1 T
District of South Carolina	9	1 T
Middle District of Louisiana	2	1 T
Middle District of Alabama	3	1 T
Northern District of New York	5	T/P
Eastern District of Virginia	10	T/P
Northern District of Alabama	8	T/P

T Temporary judgeship

T/P Conversion of existing temporary judgeships to permanent judgeships

* The Conference Already has approved a request for the creation of 19 temporary court of appeals judgeships.

authorized court of appeals judgeships and 649 district court judgeships.

- Approved the alternative or lower budget request for fiscal year 1996 for the Judiciary, subject to amendments necessary as a result of new legislation, actions of the Judicial Conference, or other reasons the director of the Administrative Office considers necessary and appropriate. The \$3.22 billion requested is nearly \$102 million less than the requests

submitted by the Conference's program committees.

- Approved a series of recommendations regarding appointment and promotion of law clerks—all law clerks on the personal staff of federal judges—including career, term, temporary, and those covered by the temporary emergency fund. The new rules do not apply to pro se law clerks or other legal staff. Effective October 31, 1994, the current freeze is lifted on the promotion